

Notice of Allowability

Application No.

09/786,057

Applicant(s)

ZUCCHETTI ET AL

Examiner

Raymond J. Henley III

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed May 4, 2005.
2. ☒ The allowed claim(s) is/are 1-7, 11 and 13-20.
3. ☒ The drawings filed on 20 November 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

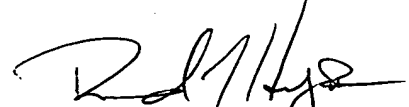
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>5/18/2005</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |


RAYMOND HENLEY III
PRIMARY EXAMINER

AK1614

RP

EXAMINER'S AMENDMENT

An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Brett Nelson on May 18, 2005.

The amendments to the specification are made to correct obvious spelling errors.

The application has been amended as follows:

In the Specification:

In the amendment to the specification dated April 24, 2002, line 5, "prolisilan" has been changed to ---prolisilane---; and

at line 6, "buthylene glycol and cethyl lactate" has been changed to ---butylene glycol and cetyl lactate---.

In the Claims:

Claim 1 has been amended as follows:

Claim 1 (currently amended): A composition for enhancing the action of Vitamin A on the cellular activity of an individual, comprising a plurality of dispersed microspheres, said plurality of microspheres comprising Vitamin A and an antioxidant inserted into a first group of microspheres, and Vitamin C inserted into a second group of microspheres;

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wherein said microspheres are made of biologically active material; and wherein the composition comprises an emollient selected from the group consisting of butylene glycol, cetyl lactate, and combinations thereof.

In claim 5, line 3, ---further contains--- has been inserted before “cosmetic compounds”;
and at line 9, “emollients,” has been deleted.

In claim 11, line 2, “prolisilan” has been changed to ---prolisilane C--- (i.e., to correct the spelling of “prolisilane” and to insert the suffix “C” as set forth in the present specification [see the amendment filed April 24, 2002, line 5 thereof]).

Claim 12 has been canceled.

Claim 19 has been amended as follows:

Claim 19 (currently amended): A composition for enhancing the action of Vitamin A on the cellular activity of an individual, comprising a plurality of dispersed microspheres, said plurality of microspheres comprising Vitamin A and an antioxidant inserted into a first group of microspheres, and Vitamin C inserted into a second group of microspheres; wherein said microspheres are made of biologically active material, wherein the Vitamin C is present in an amount effective for enhancing the action of the Vitamin A on the cellular activity of an individual; and wherein the composition comprises an emollient selected from the group consisting of butylene glycol, cetyl lactate, and combinations thereof.

Claim 20 has been amended as follows:

Claim 20 (currently amended): A composition for enhancing the action of Vitamin A on the cellular activity of an individual, comprising a plurality of dispersed microspheres, said plurality of microspheres comprising Vitamin A and an antioxidant inserted into a first group of

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microspheres, and Vitamin C inserted into a second group of microspheres;

wherein said microspheres are made of biologically active material, and Vitamin C is present at a concentration of about 0.02% by weight, and Vitamin A is present at a concentration of about 0.009% to 0.02% by weight, based on the total weight of the composition; and wherein the composition comprises an emollient selected from the group consisting of butylene glycol, cetyl lactate, and combinations thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Raymond J Henley III
Primary Examiner
Art Unit 1614

May 18, 2005

EXAMINER'S REASONS FOR ALLOWANCE

Upon further consideration of the references of record and the claimed subject matter, the Examiner believes that the subject matter of claim 12 is neither taught or suggested by the references of record. Claim 12 is directed to the presence of an emollient which is selected from the group consisting of butylene glycol, cetyl lactate, and combinations thereof (in claim 12, "butylene" and "cetyl" are misspelled).

Rinaldi et al. (U.S. Patent No. 5,891,470) is the closest art and teaches soft gel formulations comprising a fill material. The fill material may include a silicone oil (col. 2, line 5), such as cyclomethicone (col. 5, line 32), which may be in the form of an emulsion (col. 1, line 55 – col. 2, line 8). The fill material also contains porous microparticles which are generally spherical in shape (abstract and col. 2, line 44) and which are solid, water-insoluble and have a network of interconnected pores (col. 2, lines 35-37). Combinations of retinol-, a.k.a. vitamin A-, impregnated microparticles and vitamin C-impregnated microparticles are also contemplated (col. 1, line 55 – col. 2, line 9 and col. 3, line 42 – col. 4, line 56). The patentees further teach that "retinol is preferably impregnated into the microparticles as a retinoid composition containing additional ingredients, such as antioxidants and chelating agents." (col. 3, lines 52-54). The antioxidants may include, *inter alia*, BHT (butylated hydroxytoluene) (col. 4, line 3), tocopherol (vitamin E) (col. 4, line 4) and tocopheryl acetate (col. 4, line 4). It is further taught that "[t]he amount of antioxidant may vary, and is not critical to this invention provided that sufficient is present to give the retinol the desired stability...an amount ranging from 0.01% to 10% by weight of the retinoid composition will be appropriate." (col. 4, lines 6-10). The patentees also teach the presence of ingredients such as glycerin (col. 6, line 66), water (col. 6,

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line 66), fragrances (col. 5, line 59), thickeners (col. 5, lines 17-22), EDTA (ethylenediaminetetraacetic acid) (col. 4, lines 13-14).

Rinaldi et al. is silent with respect to the concept of the presence of an emollient, such as butylene glycol, cetyl lactate, and combinations thereof. Also, it is believed that the disclosure of the patentees is insufficiently detailed to have motivated one of ordinary skill in the art to employ the claimed emollients. Applicants have agreed to incorporate the subject matter of claim 12 into independent claims 1, 19 and 20 by Examiner's amendment. Accordingly, the Examiner finds all claims in the application, i.e., claims 1-7, 11 and 13-20 allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Raymond J Henley III
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Art Unit 1614

May 18, 2005